

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

JOSHUA GARTON,
Plaintiff,

v.

W. RAY CROUCH, et al.
Defendants.

)
)
)
)
)
)
)

Case No. 3:21-cv-00338
Judge Trauger

**RESPONSE OF DEFENDANT CROUCH TO
PLAINTIFF’S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT (DE 96)**

Defendant Crouch objects to Plaintiff’s request to amend his complaint and respectfully requests that the motion be denied because the proposed amendments do not support a request for injunctive and declaratory relief against Crouch.

Plaintiff asks to amend his complaint by adding paragraphs 121-127. (DE 96 PageID# 2077-78.) With the proposed amendments, Plaintiff wishes to resurrect claims for injunctive and declaratory relief against Crouch that were dismissed by this Court’s Order of January 1, 2022 (DE 62 PageID3 1933) for failure to state a claim. Plaintiff asserts that his fears of reinvestigation and re-prosecution by Crouch for posting the meme justify his request for injunctive and/or declaratory relief. (DE 96 PageID# 2077-78.) But, his proposed factual assertions are based on old comments made in March 2022 and December 2021, merely speculative statements, and do not present facts that Crouch is engaging in an ongoing violation of federal law or that he is threatening to engage in such conduct against Plaintiff. Additionally, the time has passed for any misdemeanor prosecution of Plaintiff for the meme posting.¹ The harassment charge was brought against

¹ No argument can be made that Plaintiff’s meme posting would support a felony prosecution.

Plaintiff under Tennessee Code Annotated section 39-17-308(a). (DE 12-1 PageID# 429.) “[A] violation of subsection (a) is a Class A misdemeanor.” Tenn. Code Ann. § 39-17-308. “[A]ll prosecutions for misdemeanors shall be commenced with the twelve (12) months after the offense has been committed[.]” Tenn. Code Ann. § 40-2-102. Thus, if Crouch had wanted to attempt a subsequent prosecution against Plaintiff, he would have to have brought it by January 2022.

And, Plaintiff, through discovery, knows that his factual assertions are negated by evidence currently in his possession. But, he asks this Court to allow him to amend his complaint with assertions that have no basis in fact. Over a year ago, Crouch requested the Tennessee Bureau of Investigation (“TBI”) close its investigation of the harassment charge brought against Plaintiff related to the meme. (Ex. A. Crouch letter to TBI, April 26, 2022.) On March 22, 2023, Plaintiff took the deposition of Defendant Craig and presented Crouch’s April 2022 letter to Craig for identification. (Ex. A.; Craig Deposition, pg. 62.)

Because Plaintiff’s proposed amendments fail to establish that Crouch is engaging in any on-going violations of federal law or that a credible threat exists that Crouch will engage in further alleged unconstitutional conduct, his motion to amend should be denied.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

By: /s/ Mary Elizabeth McCullohs
Mary Elizabeth McCullohs, BPR No. 026467
Senior Assistant Attorney General
Lauren D. Rota, BPR No. 037573
Assistant Attorney General
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-8126
mary.mccullohs@ag.tn.gov
lauren.rota@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2023, a true and correct copy of the foregoing *Response to Motion to Amend* was served via the CM/ECF upon the following:

Daniel A. Horwitz
Lindsay E. Smith
HORWITZ LAW, PLLC
4016 Westlawn Dr.
Nashville, TN 37209
daniel@horwitz.law
lindsay@horwitz.law

Attorneys for Plaintiff

Brice M. Timmons
Craig A. Edgington
DONATI LAW, PLLC
1545 Union Avenue
Memphis, TN 38104
brice@donatilaw.com
craig@donatilaw.com

Attorneys for Plaintiff

Amanda S. Jordan
Meghan Murphy
Senior Assistant Attorneys General
Civil Law Division
P.O. Box 20207
Nashville, TN 37202-0207
amanda.jordan@ag.tn.gov
meghan.murphy@ag.tn.gov

*Attorneys for Defendants Rausch, Nealon,
Winkler, Melton, Craig, and Vallee*

Kristin E. Berexa
Ross V. Smith
FARRAR & BATES, LLP
12 Cadillac Drive, Suite 480
Brentwood, TN 37027
kristin.berexa@farrar-bates.com
ross.smith@farrar-bates.com

*Attorneys for Defendants City of Dickson and
Arnold*

/s/ Mary Elizabeth McCullohs